THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.7093 of 2007

09.4.2007

Between:

Kottakapu Sai Reddy, S/o.late K.Narsaiah
And others

… Petitioner

AND

The Joint Collector-II-cum-Appellate Authority under
A.P. (T.A.)Abolition of Inams Act, 1955, Ranga Reddy District
And others

… Respondents

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ORDER:

Petitioners 2 to 4 are sons of petitioner No.1 and petitioner No.5 is related to them. They filed the present writ petition against the common order dated 24.2.2007 in Case Nos.F1/1677/2004 and F1/5839/2004 passed by the first respondent. They seek a writ of Certiorari to quash the same, to set aside the Occupancy Rights Certificate (ORC) issued by the second respondent in favour of respondents 4 to 9 under Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 (Inams Abolition Act, for brevity). They also seek a further direction to second respondent to conduct fresh enquiry with regard to issue of ORC.

The petition allegations are as follows. The land admeasuring Acs.16.12 gts in surey No.367 and Acs.11.29 gts in survey No.368 situated at Alwal village of Malkajgiri Mandal in Ranga Reddy District (subject land) originally belong to one Khah Jamal, who was the pattadar. Kottakapu Narsaiah, father of the first petitioner, was a protected tenant of the subject land. After death of Kottakapu Narsaiah, petitioners succeeded to the subject land, as protected tenants, as per Section 40 of Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (the Tenancy Act, for brevity). Respondents 4 to 9 are related to original pattadar. They obtained ORC in proceedings No.L/760/2001, dated 24.1.2004 from the second respondent. Petitioners did not obtain ORC as they were under the impression that the land is patta land and not inam land. Feeling aggrieved by the ORC issued in favour of the respondents 4 to 9, they filed two appeals in Case Nos.F1/1677/2004 and F1/5839/2004, claiming ORC, as protected tenants, under Section 7 of Inams Abolition Act. These two appeals were heard along with two

other appeals being Case Nos.F1/7177/2004 and F1/5862/2005. By common order dated 24.2.2007, first respondent set aside the ORC dated 24.1.2004 issued by the second respondent in favour of respondents 4 to 9 holding that the lands are kancha lands and, therefore, none of the parties can be registered as occupants under Section 4(1)(a) of Inams Abolition Act. First respondent also directed the Mandal Revenue Officer, Malkajgiri Mandal (MRO), third respondent herein, to safeguard the subject land.

Learned Counsel for the petitioners submits that the impugned order suffers from errors apparent on the face of record and that the finding arrived at by the first respondent that it is a kancha land (grazing land) and is not cultivable, is perverse. He also submits that the first respondent failed to decide various other issues framed for consideration. **Per contra**, learned Assistant Government Pleader for Revenue (General-T) submits that when the land is classified as kancha land (grazing land), ORC cannot be issued. He relies on Section 3(2)(b) and 4(1)(a) of Inams Abolition Act in support of the said contention.

Fifth petitioner herein is appellant in Case No. F1/1677/2004 before the first respondent. Petitioners 1 to 4 herein are shown as respondents 1 to 4 in Case No.F1/5839/2004 filed by one Smt.Sageerunnisa, W/o.Abdul Qhair and 13 others (not parties to this writ petition). Before the first respondent, petitioner No.5 as appellant contended that the subject land is not inam land and it is khalsa land. He also alleged that his grandfather, Narsaiah, was a protected tenant of the land. Petitioners 1 to 4 herein, who are respondents in the other appeal, also took the same plea and contended that under Section 10 of Inams Abolition Act, second respondent has no jurisdiction to issue ORC. Respondents 4 to 9, who are respondents in Case No.F1/1677/2004, filed objection denying that Narsaiah was protected tenant. They also contended that the application filed by petitioners 2 and 5 herein under Section 32 of Tenancy Act for restoration of possession was rejected by the MRO. In the background of these allegations, first respondent framed three issues for consideration, namely, (1) Are the lands in question Inam lands? (2) Were the lands in question under agriculture as on the crucial date? And (3) If so, who is entitled for grant of ORC?

While dealing with question No.1, the first respondent considered (a) Wasool Baqui of 1354 Fasli (1964), (b) Sethwar of Alwal village, (c) Classer Register of 1355 Fasli (1965) and (d) Sesala Pahani and held that in all the registers, the land in survey No.285 admeasuring Acs.157.20 gts was classified as Panmaktha land

standing in the name of Khaja Jalausa. The land in survey No.285 was subdivided into survey Nos.358, 359 and 365 to 371. As reflected in Sethwar, Sesala Pahani and Classer register, the lands were classified as Panmaktha lands (Inam lands). Insofar as second question is concerned, first respondent relied on Khasra Pahani, Sesala Pahani, Pahani of 1973-1974 and Pahanies of subsequent years and came to the conclusion that the land is classified as kancha land (grazing land). Therefore, on question No.3, first respondent came to the conclusion that under Section 4(1)(a) of Inams Abolition Act, the subject land cannot be registered in the name of anybody and no ORC can be issued.

Sections 3(2)(b) and 4(1) of Inams Abolition Act read as under.

> **3. Abolition and vesting of inams and the consequences thereof:-**
>
> (2) Save as expressly provided by or under the provisions of this Act and with effect from the date of vesting, the following consequences shall ensue, namely —-
>
> (b) all rights, title and interst vesting in the inamdar, kabiz-e-khadim, permanent tenant, protected tenant and non-protected tenant in respect of the inam land, other than the interest expressly saved by lands, cultivated and uncultivated lands (whether assessed or not), waste lands, pasture lands, forests, mines and minerals, quarries, rivers and streams, tanks and irrigation works, fisheries and ferries shall cease and be vested absolutely in the State free from all encumbrances.
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> **4. Registration of Inamdars as occupants:-**
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> (1) Every inamdar shall, with effect from the date of vesting, be entitled to be registered as an occupant of all inam lands other than –
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> (a) lands set apart for the village community, grazing lands, waste lands, forest lands, mines and quarries, tanks, tank-beds and irrigation works, streams and rivers;
>
> (b) lands in respect of which any person is entitled to be registered under Sections 5, 6, 7 and 8 of the Act;
>
> (c) lands upon which have been erected buildings owned by any person other than the inamdar;
>
> Which immediately before the date of vesting, were under his personal cultivation and which, together with any lands he separately owns and cultivates personally are equal to four and a half times the 'family holding'.
>
> Provided that where inams are held by or for the benefit of charitable and religious institutions no person shall be entitled to be registered as an occupant under Sections 5, 6, 7 and 8 and the institution alone shall be entitled to be registered as an occupant of all inam lands other than those specified in clauses (a) and (c) above without restriction of extent to four and half times the family holding and without the condition of personal cultivation;

> Provided further that where any person other than the concerned charitable or religious institution has been registered as an occupant under Sections 5, 6, 7 and 8 after the commencement of the Andhra Pradesh (Telangana Area) Abolition of Inams (Amendment) Act, 1985 such registration shall and shall be deemed always to have been *null* and *void* and no effect shall be given to such registration.

A plain reading of Sections 3(2)(b) and 4(1) of Inams Abolition Act show that community lands, grazing lands, waste lands, forest lands, mines and quarries, tanks, tank-beds and irrigation works, streams and rivers, absolutely vest in the State free from all encumbrances and an inamdar much less any person can be registered as occupant of the said land. Therefore, the ORC issued by the second respondent was *ex facie* illegal. When the land is classified as kancha land and there is abundant unimpeachable evidence by way of revenue records for more than fifty years, first respondent was justified in setting aside the ORC. This Court does not find any infirmity or error apparent on the face of record.

The writ petition, with the above observations, is accordingly dismissed. No costs.

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(**V.V.S.RAO, J**)

April 09, 2007.
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